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DEPARTMENT OF JUSTICE

28 CFR Part 0

[Directive No. 1-15]

Redelegation of Authority to Deputy Assistant Attorneys General, Branch Directors, Heads of Offices, and United States Attorneys in Civil Division Cases

AGENCY: Office of the Assistant Attorney General, Civil Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends Civil Directive 1-10, which sets forth the redelegation of authority by the Assistant Attorney General of the Civil Division to deputy assistant attorneys general, branch directors, heads of offices, and United States Attorneys. On May 21, 2015, the Attorney General signed Order No. 3532-2015 increasing the monetary thresholds for the authority of Assistant Attorneys General to compromise or close civil claims, and increasing the redelegation authority to the United States Attorneys with respect to accepting offers of compromise for affirmative claims. Pursuant to the Attorney General's order, the new rule increases the redelegated authority to Branch Directors, heads of offices, and United States Attorneys to close or compromise affirmative claims. Additionally, the new rule redelegates to United States Attorneys, directors, and attorneys-in-charge the authority to issue compulsory process, and makes a few "housekeeping" revisions.

DATES: *Effective Date:* This rule is effective [insert date of publication in the Federal Register], and is applicable beginning May 29, 2015.

FOR FURTHER INFORMATION CONTACT: Joyce R. Branda, Deputy Assistant Attorney General, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530; 202-307-0231.

SUPPLEMENTARY INFORMATION: This rule is a matter of internal Department management. It has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866. The Assistant Attorney General for the Civil Division has determined that this rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and accordingly this rule has not been reviewed by the Office of Management and Budget. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Assistant Attorney General for the Civil Division has reviewed this rule, and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, for the reasons stated in the preamble, title 28, chapter I, part 0, of the Code of Federal Regulations is amended as set forth below:

PART 0-ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Appendix to Subpart Y is amended by removing Civil Directive No. 1-10 and adding in its place Civil Directive No. 1-15, to read as follows:

**APPENDIX TO SUBPART Y OF PART 0—REDELEGATIONS OF AUTHORITY
TO COMPROMISE AND CLOSE CIVIL CLAIMS**

* * * * *

[Directive No. 1-15]

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal Regulations, particularly §§ 0.45, 0.160, 0.164, and 0.168, it is hereby ordered as follows:

Section 1. Scope of Delegation Authority

(a) Delegation to Deputy Assistant Attorneys General. The Deputy Assistant Attorneys General are hereby delegated all the power and authority of the Assistant Attorney General in charge of the Civil Division, including with respect to the institution of suits, the acceptance or rejection of compromise offers, the administrative settlement of claims, and the closing of claims or cases, unless any such authority or power is required by law to be exercised by the Assistant Attorney General personally or has been specifically delegated to another Department official.

(b) Delegation to United States Attorneys; Branch, Office and Staff Directors; and Attorneys-in-Charge of Field Offices. Subject to the limitations imposed by 28 CFR

0.160(d) and 0.164, and sections 1(e) and 4(b) of this directive, and the authority of the Solicitor General set forth in 28 CFR 0.163, United States Attorneys; Branch, Office, and Staff Directors; and Attorneys-in-Charge of Field Offices, with respect to matters assigned or delegated to their respective components, are hereby delegated the authority to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed \$10,000,000;

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed \$1,000,000;

(3) Reject any offers in compromise; and

(4) Close any affirmative claim or case where the gross amount of the original claim does not exceed \$10,000,000.

(c) Subject to the limitations imposed by sections 1(e), 4(b), and 5 of this directive, United States Attorneys, Directors, and Attorneys-in-Charge are hereby delegated the authority to:

(1) File suits, counterclaims, and cross-claims, or take any other action necessary to protect the interests of the United States in all routine nonmonetary cases, in all routine loan collection and foreclosure cases, and in other monetary claims or cases where the gross amount of the original claim does not exceed \$10,000,000. Such actions in nonmonetary cases which are other than routine will be submitted for the approval of the Assistant Attorney General, Civil Division; and,

(2) Issue subpoenas, civil investigative demands, and any other compulsory process.

(d) United States Attorneys may redelegate in writing the above-conferred compromise and suit authority to Assistant United States Attorneys who supervise other Assistant United States Attorneys who handle civil litigation.

(e) Limitations on delegations.

(1) The authority to compromise cases, settle claims administratively, file suits, counter-claims, and cross-claims, to close claims or cases, or take any other action necessary to protect the interests of the United States, delegated by paragraphs (a), (b), and (c) of this section, may not be exercised, and the matter shall be submitted for resolution to the Assistant Attorney General, Civil Division, when:

(i) For any reason, the proposed action, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the above paragraphs.

(ii) Because a novel question of law or a question of policy is presented, or for any other reason, the proposed action should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General, Civil Division.

(iii) The agency or agencies involved are opposed to the proposed action. The views of an agency must be solicited with respect to any significant proposed action if it is a party, if it has asked to be consulted with respect to any such proposed action, or if such proposed action in a case would adversely affect any of its policies.

(iv) The United States Attorney involved is opposed to the proposed action and requests that the matter be submitted to the Assistant Attorney General for decision.

(v) The case is on appeal, except as determined by the Director of the Appellate Staff.

(2) In fraud or False Claims Act cases and matters, for reasons similar to those listed in sub-section 1(e)(1)(i) through 1(e)(1)(iii) above, the Director of the Fraud Section of the Commercial Litigation Branch, after consultation with the United States Attorney, may determine that a case or matter will not be delegated to the United States Attorney, but personally or jointly handled, or monitored, by the Civil Division.

Section 2. Action Memoranda

(a) Whenever, pursuant to the authority delegated by this Directive, an official of the Civil Division or a United States Attorney accepts a compromise, closes a claim or files a suit or claim, a memorandum fully explaining the basis for the action taken shall be executed and placed in the file. In the case of matters compromised, closed, or filed by United States Attorneys, a copy of the memorandum must, upon request therefrom, be sent to the appropriate Branch or Office of the Civil Division.

(b) The compromising of cases or closing of claims or the filing of suits for claims, which a United States Attorney is not authorized to approve, shall be referred to the appropriate Branch or Office within the Civil Division, for decision by the Assistant Attorney General or the appropriate authorized person within the Civil Division. The referral memorandum should contain a detailed description of the matter, the United States Attorney's recommendation, the agency's recommendation where applicable, and a full statement of the reasons therefor.

Section 3. Return of Civil Judgment Cases to Agencies

Claims arising out of judgments in favor of the United States which cannot be permanently closed as uncollectible may be returned to the referring Federal agency for servicing and surveillance whenever all conditions set forth in USAM 4-3.230 have been met.

Section 4. Authority for Direct Reference and Delegation of Civil Division Cases to United States Attorneys

(a) Direct reference to United States Attorneys by agencies. The following civil actions under the jurisdiction of the Assistant Attorney General, Civil Division, may be referred by the agency concerned directly to the appropriate United States Attorney for handling in trial courts, subject to the limitations imposed by paragraph (b) of this section. United States Attorneys are hereby delegated the authority to take all necessary steps to protect the interests of the United States, without prior approval of the Assistant Attorney General, Civil Division, or his representatives, subject to the limitations set forth in section 1 (e) of this directive. Agencies may, however, if special handling is desired, refer these cases to the Civil Division. Also, when constitutional questions or other significant issues arise in the course of such litigation, or when an appeal is taken by any party, the Civil Division should be consulted.

(1) Money claims by the United States where the gross amount of the original claim does not exceed \$10,000,000.

(2) Single family dwelling house foreclosures arising out of loans made or insured by the Department of Housing and Urban Development, the Department of Veterans Affairs, or the Farm Service Agency.

(3) Suits to enjoin violations of, or to collect penalties under, the Agricultural Adjustment Act of 1938, 7 U.S.C. 1376; the Packers and Stockyards Act, 7 U.S.C. 203, 207(g), 213, 215, 216, 222, and 228a; the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. 499c(a) and 499h(d); the Egg Products Inspection Act, 21 U.S.C. 1031 *et seq.*; the Potato Research and Promotion Act, 7 U.S.C. 2611 *et seq.*; the Cotton Research and Promotion Act of 1966, 7 U.S.C. 2101 *et seq.*; the Federal Meat Inspection Act, 21 U.S.C. 601 *et seq.*; and the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 *et seq.*

(4) Suits by social security beneficiaries under the Social Security Act, 42 U.S.C. 402 *et seq.*

(5) Social Security disability suits under 42 U.S.C. 423 *et seq.*

(6) Black lung beneficiary suits under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 921 *et seq.*

(7) Suits by Medicare beneficiaries under 42 U.S.C. 1395ff.

(8) Garnishment actions authorized by 42 U.S.C. 659 for child support or alimony payments and actions for general debt, 5 U.S.C. 5520a.

(9) Judicial review of actions of the Secretary of Agriculture under the food stamp program, pursuant to the provisions of 7 U.S.C. 2022 involving retail food stores.

(10) Cases referred by the Department of Labor for the collection of penalties or for injunctive action under the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970.

(11) Cases referred by the Department of Labor solely for the collection of civil penalties under the Farm Labor Contractor Registration Act of 1963, 7 U.S.C. 2048(b).

(12) Cases referred by the Surface Transportation Board to enforce orders of the Surface Transportation Board or to enjoin or suspend such orders pursuant to 28 U.S.C. 1336.

(13) Cases referred by the United States Postal Service for injunctive relief under the nonmailable matter laws, 39 U.S.C. 3001 *et seq.*

(b) Cases not covered. Regardless of the amount in controversy (unless otherwise specified), the following matters normally will not be delegated to United States Attorneys for handling but will be personally or jointly handled or monitored by the appropriate Branch or Office within the Civil Division:

(1) Cases in the Court of Federal Claims.

(2) Cases within the jurisdiction of the Commercial Litigation Branch involving patents, trademarks, copyrights, etc.

(3) Cases before the United States Court of International Trade.

(4) Any case involving bribery, conflict of interest, breach of fiduciary duty, breach of employment contract, or exploitation of public office.

(5) Any case involving vessel-caused pollution in navigable waters.

(6) Cases on appeal, except as determined by the Director of the Appellate Staff.

(7) Any case involving litigation in a foreign court.

(8) Criminal proceedings arising under statutes enforced by the Food and Drug Administration, the Consumer Product Safety Commission, the Federal Trade Commission, and the National Highway Traffic Safety Administration (relating to odometer tampering), except as determined by the Director of the Consumer Protection Branch.

(9) Nonmonetary civil cases, including injunction suits, declaratory judgment actions, and applications for inspection warrants, and cases seeking civil penalties where the gross amount of the original claim exceeds \$10,000,000.

(10) Cases arising under the statutes listed in 28 CFR 0.45(j), except as determined by the Director of the Consumer Protection Branch.

(11) Administrative claims arising under the Federal Tort Claims Act.

Section 5. Civil Investigative Demands

Authority relating to Civil Investigative Demands issued under the False Claims Act is hereby delegated to United States Attorneys in cases that are delegated or assigned as monitored to their respective components. In accordance with guidelines provided by the Assistant Attorney General, each United States Attorney must provide notice and a report of Civil Investigative Demands issued by the United States Attorney. Authority relating to Civil Investigative Demands issued under the False Claims Act in cases that are jointly or personally handled by the Civil Division is hereby delegated to the Director of the Fraud Section of the Commercial Litigation Branch. When a case is jointly handled by the Civil Division and a United States Attorney's Office, the Director of the Fraud Section will issue a Civil Investigative Demand only after requesting the United States Attorney's recommendation.

Section 6. Adverse Decisions

All final judicial decisions adverse to the Government, other than bankruptcy court decisions except as provided herein, involving any direct reference or delegated case must be reported promptly to the Assistant Attorney General, Civil Division, attention Director, Appellate Staff. Consult title 2 of the United States Attorney's

Manual for procedures and time limitations. An appeal of such a decision, as well as an appeal of an adverse decision by a district court or bankruptcy appellate panel reviewing a bankruptcy court decision or a direct appeal of an adverse bankruptcy court decision to a court of appeals, cannot be taken without approval of the Solicitor General. Until the Solicitor General has made a decision whether an appeal will be taken, the Government attorney handling the case must take all necessary procedural actions to preserve the Government's right to take an appeal, including filing a protective notice of appeal when the time to file a notice of appeal is about to expire and the Solicitor General has not yet made a decision. Nothing in the foregoing directive affects this obligation.

Section 7. Definitions

(a) For purposes of this directive, in the case of claims involving only civil penalties, other than claims defined in 28 CFR 0.169(b), the phrase "gross amount of the original claim" shall mean the maximum amount of penalties sought.

(b) For purposes of this directive, in the case of claims asserted in bankruptcy proceedings, the phrase "gross amount of the original claim" shall mean liquidation value. Liquidation value is the forced sale value of the collateral, if any, securing the claim(s) plus the dividend likely to be paid for the unsecured portion of the claim(s) in an actual or hypothetical liquidation of the bankruptcy estate.

Section 8. Supersession

This directive supersedes Civil Division Directive No. 1-10 regarding redelegation of the Assistant Attorney General's authority in Civil Division cases to Branch Directors, heads of offices, and United States Attorneys.

Section 9. Applicability

This directive applies to all cases pending as of the date of this directive and is effective immediately.

Section 10. No Private Right of Action

This directive consists of rules of agency organization, procedure, and practice and does not create a private right of action for any private party to challenge the rules or actions taken pursuant to them.

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June 1, 2015

Date

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Civil Division*

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